

MANU/BH/0315/2019

Equivalent Citation: AIR2020Pat138, 2020(3)PLJR789

IN THE HIGH COURT OF PATNA

Letters Patent Appeal No. 672 of 2009

Decided On: 21.02.2019

Appellants: **Nand Kumar Thakur**
Vs.

Respondent: **The State of Bihar and Ors.**

Hon'ble Judges/Coram:

Amreshwar Pratap Sahi, C.J., Chakradhari Sharan Singh, Ashutosh Kumar, Sudhir Singh and Rajeev Ranjan Prasad, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Ajay Kumar Thakur, Md. Imteyaz Ahmad, Babita Kumari, Pravin Kumar, Swati Sinha, Arya Achint and Arun Kumar Jha, Advocates

For Respondents/Defendant: S. Raza Ahmad, AAG-5, Manoj Kumar, AC to SC-12, Karan Deep Kumar and Alok Ranjan, AC to AAG-5

JUDGMENT

Amreshwar Pratap Sahi, C.J.

1. Heard Shri Ajay Kumar Thakur, learned counsel for the appellant, Shri Arun Kumar Jha who had appeared at the stage of the writ petition and Shri Raza Ahmad, learned Additional Advocate General - 5 for the State of Bihar.

2. This Five Judges Bench had to be constituted, as a Bench of Three Judges in this appeal by a majority have doubted the correctness of the earlier Three Judges Full Bench of this Court in the case of Ram Kishun Mandal & Anr. Vs. The State of Bihar and others reported in MANU/BH/0312/1987 : 1987 PLJR 291. The said Full Bench judgment in the case of Ram Kishun Mandal (supra) was also delivered by a majority of 2:1 where one of the questions that arose was as to whether the Revenue Officer in terms of subsection (3) of Section 103 A of the Bihar Tenancy Act, 1885 (hereinafter referred to as the Act) did have the inherent power to review his own decision till the final publication of the record of rights. The consideration was about the opinion expressed in the ratio of the Division Bench Judgment in the case of Devendra Prasad Gupta Vs. State of Bihar and Others (MANU/BH/0043/1977 : 1977 PLJR 576) where it was held that the Revenue Officer can review his own order as well as revise any other order passed by any other Revenue Officer. The Full Bench answered the same in paragraph 15 and 16 of the judgment which is reproduced hereunder:-

"15. As regards question no. 3, no serious controversy could be raised with regard thereto in view of binding precedent on the point. Way back in MANU/BH/0003/1958 : 1957 BLJR 292 (Ramdeyal Missir and others v. The State of Bihar and others) an identical issue arose which was authoritatively answered by Ramaswami, Chief Justice speaking for the Division Bench as under:-

"On an examination of the language of these provisions it is manifest that the Settlement Officer has not been expressly granted the power of review of an order passed by the Assistant Settlement Officer under Section 103 A of the Bihar Tenancy Act."

The aforesaid judgment was challenged by way of appeal and the Constitution Bench affirming the High Court in 1962 BLJR 385 (State of Bihar and another v. Ram Dayal Missir, etc.) held as under:-

"In the very nature of things proceedings under the provisions of the Bihar Tenancy Act like the one before us do not admit of review under the provisions of O. XLVII of the Code of Civil Procedure which apply to 'decree or order' of a kind different from orders passed by an Assistant Settlement Officer or a Settlement Officer during the course of preparation of Record of Rights, which has no finality in so far as the question of title is concerned. It must, therefore, be held that neither in express terms nor as officers discharging quasi-judicial functions have the Settlement or the Assistant Settlement Officer the power to review their orders, except by way of correction of accidental mistakes, under the inherent power of an officer, who has the duty to perform judicial functions."

16. In the light of the aforesaid authoritative enunciation, the answer to question no. 3 is rendered in the negative and it is held that the Revenue Officer acting under section 103-A (3) of the Act has no inherent power to review his own decision till the final publication of the record of rights."

3. It was, therefore, held that there was no inherent power of review.

4. It may be mentioned at this stage that an amendment was brought about by Act I of 1963 in Section 103 A (3) and the word "revise" was introduced. This appears to have been incorporated in order to clearly define the powers of the Revenue Officer and to eliminate any doubt or mischief regarding the same after the judgment in the case of State of Bihar and another v. Ram Dayal Missir (supra).

5. The Full Bench in the case of Ram Kishun Mandal (supra) did notice the entire legislative history as well as the provision presently in question. Yet while giving the answer to question no. 3 as reproduced hereinabove any discussion on the meaning and impact of the word 'revise' was completely omitted and no finding upon a consideration of the same was recorded. This omission in the Full Bench Judgment in the case of Ram Kishun Mandal (supra) has been clearly noticed by the three Judges while referring this matter under the order dated 8th September, 2014. This order by a majority concludes that the word "revise" as incorporated in the year 1963 authorizes the Revenue Officer to either revise his own order or the order passed by the Revenue Officer.

6. The word "revise" should not be intermingled with the conferring of jurisdiction of "revision" as understood either under Section 115 of the Civil Procedure Code or even under the power of revision provided for under Section 104 -G (2) of the 1885 Act where the Board of Revenue has the power of revision. The context in which the word "revise" has been used under Section 103A (3) of the 1885 Act means to re-examine or look over again and correct. It is derived from the latin word "revisere" which means to visit again or to look back upon. The prefix "re" means attentively and the suffix "visere" means to see. It is therefore a power to be exercised on discovery of

mistakes or omissions for correction on disclosure of errors. The power is exercisable on disclosure of fuller information on a matter that may lead the Officer to revise his opinion as against previously formed by him. The word "revise" has to be understood in contrast to a rough estimate.

7. In order to clear the cloud with regard to the intentment of the Legislature, it would be apt to quote Section 103 A (3) of the Act which is gainfully reproduced hereunder:-

"103A. Preliminary Publication, amendment and final publication of record-of-rights.- (1) When a draft record of-rights has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom during the period of publication.

(2) When such objections have been considered and disposed of according to such Rules as the State Government may prescribe, and (if a settlement of land revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under Section 104-F, sub-section (3), the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

[(3) Revenue Officer specially empowered by the State Government in this behalf, may, on application made to him within three months or any order or decision on any objection made under sub-section (1) or on his own motion, after giving reasonable notice to the parties concerned to appear and be heard in the matter, revise, at any time before the final publication of the record-of-rights, any such order or decision whether made by himself or by any other Revenue Officer.]"

8. A perusal of the language employed by the Legislature leaves no room for doubt that the Revenue Officer of his own motion or otherwise on an application moved can revise any order or decision whether made by himself or by any other Revenue Officer. The provisions are unambiguous and admit of no doubt at all. The Legislative intent was clearly to authorize the Revenue Officer to revise his own decision or by any Revenue Officer specially empowered by the State Government in this behalf. The intention, therefore, was to avoid any error in the maintenance of an entry or record of rights and simultaneously an appropriate opportunity is available to any affected person to get his grievances redressed with a statutory authorization to the officer himself to correct the records and entries accordingly.

9. The minority view expressed in the referring order has arrived at the conclusion after drawing parallels with the provisions of review as contained in the Civil Procedure Code under Order 47 CPC and the powers of revision as contained in Section 115 CPC as explained in the judgments relating thereto. It has been observed in the minority view that the Revenue Officer can revise the order passed by any subordinate authority but he is not empowered to revise his own order and the word 'revise' has to be read down to the extent as indicated by the learned Judge.

10. We are unable to subscribe to the minority view, inasmuch as, if the Legislature has used any word specifically then the same cannot be termed as surplusage by any stretch of interpretation. When the words are clear and unambiguous then there is no

option so as to substitute the same to give it a meaning than that what has been intended by the Legislature. The use of the word 'himself' leaves no room for doubt that any decision given by the Revenue Officer himself or by any other officer can be revised and the word 'revise' has been used in a wide context to enable the authority to appropriately correct all record of rights subject to the conditions mentioned therein. The purpose is to conclude and draw the curtain on all disputes as far as possible up-to that stage subject to further remedies under the statute.

11. Shri Jha, however, submitted that this may introduce an element of encouraging extraneous considerations for the officers to indulge in passing any such orders. We are unable to accept the said submission for the simple reason that the revision of record of rights is meant for setting at rest petty disputes or even substantial disputes of record of rights arising out of land tenures, and for that in order to attach finality in a substantial way such conferment of powers cannot be said to be outside the scope of the competence of the Legislature to endow such authority. Merely because an officer may be influenced by any extraneous consideration is too abstract a proposition to be applied in order to read down the provisions and to take away the powers of the authority that has been specifically conferred on it by the Legislature, the wisdom thereof cannot be questioned. The powers so conferred do not appear to be in contradiction with or in conflict with any other law or the competence of the Legislature to enact such a law for the purpose for which it was enacted. A bare possibility that a power may be misused or abused is no ground for holding that such a power ought not to be conferred or that it should not exist. There are ample safeguards under the 1885, Act to remedy any grievance against the order of the Revenue Officer.

12. The majority ratio of the Full Bench in the case of Ram Kishun Mandal (supra) overlooks the purpose of the amendment that was introduced in 1963 to overcome the hurdle created by an ambiguity in the then existing provisions the mischief whereof was redressed by introducing the word "revise".

13. Consequently we are, with respect, unable to affirm the said ratio. Our humble dissent with the majority view expressed in Ram Kishun Mandal case (supra) comes forth as we are of the opinion that the literal interpretation, coupled with that which advances the purpose of the section, is appropriately harmonized by applying Heydon's rule giving full meaning to the letter and intent of the words used by the Legislature.

14. Accordingly, we are of the unanimous opinion that the majority view of the three judges Bench in the referring order dated 8th September, 2014 passed in L.P.A. No. 672 of 2009 lays down the correct proposition of law. Consequently, the law as declared in paragraphs 15 and 16 in the case of Ram Kishun Mandal (supra) extracted hereinabove with all respect does not lay down the law correctly and is therefore overruled.

15. Let the papers be placed before the concerned Bench for proceeding accordingly.

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